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 RIVER RANCH FRESH FOODS, LLC

**UNITED STATES DISTRICT COURT FOR THE
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

NATURAL SELECTION FOODS, LLC,)
 dba EARTHBOUND FARMS,)
 Plaintiff/Counter-Defendant,)
 vs.)
 RIVER RANCH FRESH FOODS, LLC,)
 Defendant/Counter-Claimant.)
 _____)

Case No. 5:07-cv-02548-JW
 [HON. JAMES WARE]

**OPPOSITION OF RIVER RANCH FRESH
 FOODS TO MOTION TO DISMISS
 COUNTERCLAIMS AND TO STRIKE
 AFFIRMATIVE DEFENSES**

Hearing Date: Sept. 11, 2007
 Time: 10:00 a.m.
 Place: Courtroom 8,
 4th Floor,
 San Jose

Defendant and Counter-Claimant RIVER RANCH FRESH FOODS, LLC
 ("River Ranch") submits the following Memorandum of Points &
 Authorities in Opposition to Plaintiff and Counter-Defendant
 NATURAL SELECTION FOODS' ("Natural Selection") Motion to Dismiss
Counterclaims and to Strike Affirmative Defenses:

TABLE OF CONTENTS

I.	<u>The Nature of River Ranch's Counterclaims Falls Within the Supplemental Jurisdiction of the Court</u>	2
II.	<u>Natural Selection's Argument that River Ranch's Counterclaims Should be Dismissed Because They "Substantially Predominate" Over Natural Selection's PACA Claim Should Be Rejected.</u>	4
III.	<u>Natural Selection's Argument That the Negligence Counterclaims Should Be Dismissed Because they Are Really Contract Claims is Baseless.</u>	6
IV.	<u>The "Economic Loss" Rule is Inapplicable.</u>	7
V.	<u>River Ranch Has Sufficiently Alleged "Independently Wrongful" Conduct in Connection With Its Counterclaim For Negligent Interference With Prospective Economic Advantage.</u>	8
VI.	<u>Natural Selection's Motion to Strike the Affirmative Defenses Should Be Rejected Out of Hand.</u>	9
VII.	<u>Summary</u>	9

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TABLE OF AUTHORITIES

FEDERAL CASES:

Ammerman vs. Sween, 54 F.3d 423 (7th Cir. 1995)	2
Channel vs. Citicorp National Services, Inc., 89 F.3d 379 (7th Cir. 1996)	2
Jones vs. Ford Motor Credit Company, 358 F.3d 205 (2nd Cir. 2004)	2, 3, 9
United Mine Workers vs. Gibbs, 383 U.S. 715 (1966)	2

FEDERAL STATUTES:

28 U.S.C. § 1367	2, 4
28 U.S.C. § 1367(a)	4
28 U.S.C. § 1367(b)	4, 6

STATE CASES:

Aas vs. Superior Court 24 Cal.4th 627 (2000)	8
Chameleon Engineering Corp. vs. Air Dynamics, Inc., 101 Cal. App.3d 418 (1980)	7
Erlich vs. Menezes, 21 Cal.4th 543 (1999)	8
North American Chemical Co., vs. Superior Court 59 Cal. App.4th 764 (1997)	6, 7

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2

3 I. The Nature of River Ranch's Counterclaims Falls Within the

4 Supplemental Jurisdiction of the Court

5 Congress' enactment of 28 U.S.C. § 1367 explicitly extending

6 the federal courts' jurisdiction to "all other claims" in a civil

7 action "so related to claims in the action within [the district

8 court's] original jurisdiction that they form part of the same

9 case or controversy under Article III of the United States

10 Constitution" is consistent with the general principal that "two

11 court actions should not be encouraged where one will do."

12 The court's authority to permit supplemental claims, even

13 loosely related claims, is broad. In Ammerman vs. Sween, 54 F.3d

14 423 (7th Cir. 1995) the court held that § 1367 "**confers**

15 **supplemental jurisdiction to the limits of Article III of the**

16 **Constitution...**" (at page 424.) In keeping with the broad

17 limits of supplemental jurisdiction courts have permitted

18 expansive application. Illustrative is Channel vs. Citicorp

19 National Services, Inc., 89 F.3d 379 (7th Cir. 1996), in which

20 the court interpreted the expanded jurisdictional scope of § 1367

21 to mean that "[a] loose factual connection between the claims"

22 can be sufficient. (at page 385). In Jones vs. Ford Motor Credit

23 Company, 358 F.3d 205 (2nd Cir. 2004), the court opined that the

24 language of § 1367 appears to be broader than the test of "a

25 common nucleus of operative facts" enunciated by the Court in

26 United Mine Workers vs. Gibbs, 383 U.S. 715 (1966), decided prior

27 to the enactment of § 1367.

28 River Ranch's claims fall within the broad range of the

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1 court's authority to exercise supplemental jurisdiction. River
2 Ranch's allegations in support of its counterclaims show an
3 ongoing contractual relationship between Natural Selection or its
4 predecessor in interest and River Ranch covering a period of more
5 than 6 years and involving the growing, processing, purchasing
6 and sale of produce, all of which was supported by various
7 marketing agreements and other related documents. Many of these
8 agreements and related documents refer to federal statutes and
9 regulations, i.e., reference to regulations developed by the FDA
10 contained in the River Ranch Fresh Foods, LLC - Supplier
11 Checklist attached as Exhibit B to River Ranch's counterclaim.

12 In an effort to narrowly characterize its claims, Natural
13 Selection's argument is essentially linear in nature: "It wasn't
14 until AFTER we sold you the good produce that we distributed the
15 adulterated produce, therefore, there is no connection between
16 the two claims sufficient for supplemental jurisdiction to
17 exist."

18 However, Natural Selection's own Complaint references the
19 problems involving the adulterated produce it was marketing. In
20 paragraphs 9 through 14 of its Complaint, Natural Selection
21 alleges that produce had to be recalled, and alleges that Natural
22 Selection gave "credit" to River Ranch which it alleges was more
23 than sufficient. Accordingly, Natural Selection's argument that
24 the subject of the adulterated produce is completely separate
25 from its own claim is specious.

26 In fact, it can reasonably be argued that River Ranch's
27 counterclaims are "compulsory." In Jones vs. Ford Motor Credit
28 Company, 358 F.3d 205 (2nd Cir. 2004), the court opined that both

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the ECOA claim and the debt collection claims originated from the plaintiffs' decision to purchase Ford cars. In the same vein, Natural Selection's claim to recover for produce sold and River Ranch's counterclaims for damages arise out of River Ranch's decision to purchase product from Natural Selection and Natural Selection's decision to sell produce to River Ranch. The court here has authority under 28 U.S.C. § 1367 to exercise supplemental jurisdiction and supplemental jurisdiction is proper based on the relationship of the parties, common agreements, and the produce purchase and sale connection between the claims.

II. Natural Selection's Argument that River Ranch's Counterclaims Should be Dismissed Because They "Substantially Predominate" Over Natural Selection's PACA Claim Should Be Rejected.

As a "fall-back" Natural Selection argues that even if supplemental jurisdiction exists under § 1367(a), the court should exercise its discretion under subsection (b) and decline to allow the supplemental claims because River Ranch's counterclaims "substantially predominate" over Natural Selection's original claim.

In an attempt to support this position, Natural Selection argues that River Ranch's counterclaims would **"introduce a vast spectrum of new and unrelated issues..."** (Natural Selection Motion page 7, line 10) which would include the following:

(i) A determination of the cause of the [E. Coli] outbreak.

This will not be an "issue" and, if it were, it has already

1 been determined by the California Department of Health Services
2 and the U.S. Food and Drug Administration, as set forth in its
3 "final" report of 21 March 2007 entitled Investigation of
4 Escherichia coli) O157-H7 Outbreak Associated with
5 Dole-Prepackaged Spinach.

6 (ii) An evaluation of Natural Selection's overall food
7 safety practices in comparison to overall industry practice.

8 Again, this is certainly not a legitimate issue as far as
9 River Ranch's First Counterclaim is concerned, and in view of the
10 adulterated produce which Natural Selection introduced into the
11 stream of commerce, may well be a nonexistent major issue with
12 respect to the Second and Third Counterclaims.

13 (iii) A calculation of the multiple categories of
14 consequential damages alleged by River Ranch.

15 River Ranch is confident that the Court will be able to
16 handle whatever damage issues and/or calculations may be
17 necessary.

18 Natural Selection's argument that permitting the
19 counterclaims would frustrate the purposes of PACA Trust
20 legislation is baseless and the cases cited in support thereof
21 are clearly inapplicable. Natural Selection's footnote on page 8
22 of its motion quoting the 1984 amendments to the PACA Trust
23 statute is misleading. The 1984 amendment had to do with the
24 creation of a statutory trust in order to give unpaid suppliers
25 what is essentially a "super-priority" over secured lenders - the
26 instant litigation has no relation whatsoever to the purposes of
27 the 1984 amendment. Natural Selection's claim is at most a
28 simple collection matter, for which they could as easily have

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1 proceeded in state court on the common count of Goods Sold and
2 Delivered.

3 For the foregoing reasons, the court should exercise its
4 discretion under subsection (b) to allow River Ranch's
5 counterclaims to be asserted in this action.

6
7 III. Natural Selection's Argument That the Negligence
8 Counterclaims Should Be Dismissed Because they Are Really
9 Contract Claims is Baseless.

10 Natural Selection argues that conduct which amounts to a
11 breach of contract cannot support a claim for damages based on
12 negligence. This is simply wrong. North American Chemical Co.,
13 vs. Superior Court 59 Cal. App.4th 764 (1997) is authority for
14 the proposition that negligent performance of a contractual
15 obligation gives rise to an action in tort. In that case, North
16 American Chemical entered into a contract with Trans Harbor which
17 required Trans Harbor to package and ship certain chemicals for
18 delivery abroad. In connection with the performance of its
19 packaging duties, Trans Harbor utilized a silo that had
20 previously been used for to store a different chemical which
21 resulted in contamination. North American sued Trans Harbor for
22 negligence. Rejecting Trans Harbor's argument that North
23 American could only sue for breach of contract, the court stated:

24
25 Harbor Pac's contract with North American
26 imposed a legal duty on Harbor Pac to
27 perform that contract with due care. Its
28 alleged failure to do so was a breach of
that legal duty giving North American a
remedy in tort as well as contract.

At pages 785,786

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1 With respect to River Ranch's Third Counterclaim (Negligent
 2 Interference with Prospective Economic Advantage),
 3 Chameleon Engineering Corp. vs. Air Dynamics, Inc., 101
 4 Cal. App.3d 418 (1980), clearly establishes the validity of
 5 such a theory of recovery. In that case a subcontractor
 6 negligently failed to supply the general contractor with
 7 the materials necessary to timely meet the contract
 8 deadline, thereby causing the general contractor to suffer
 9 damages. The court permitted a claim against the negligent
 10 subcontractor for negligent interference with prospective
 11 economic advantage. River Ranch's claims that Natural
 12 Selection' negligence which resulted in adulterated product
 13 being re-sold by River Ranch and subsequent damage to River
 14 Ranch are analogous to the foregoing cases.

15
 16 IV. The "Economic Loss" Rule is Inapplicable.

17 North American Chemical Co., vs. Superior Court 59
 18 Cal. App.4th 764 (1997) is authority for the proposition
 19 that the "Economic Loss" Rule does not apply in cases
 20 involving the negligent performance of services (as opposed
 21 to the sale of good) which results in foreseeable economic
 22 loss.

23 The relationship between River Ranch and Natural
 24 Selection was not simply one of buyer and seller. Central
 25 to River Ranch's counterclaims are the processing
 26 procedures and standards set forth in the River Ranch Fresh
 27 Foods, LLC - Supplier Checklist, [Exhibit B to
 28 counterclaim], which Natural Selection was required to

1 follow in connection with its preparation and packaging of
2 produce for delivery to River Ranch.

3 Erlich vs. Menezes, 21 Cal.4th 543 (1999), cited by
4 Natural Selection, is simply inapplicable. In that case
5 the issue before the court was whether emotional distress
6 damages are recoverable for the negligent breach of a
7 contract to construct a house. Likewise, the case of Aas
8 vs. Superior Court 24 Cal.4th 627 (2000) is a construction
9 defect case.

10
11 V. River Ranch Has Sufficiently Alleged "Independently
12 Wrongful" Conduct in Connection With Its Counterclaim
13 For Negligent Interference With Prospective Economic
14 Advantage.

15 As set forth in paragraph 78 of its Counterclaim,
16 Natural Selection negligently failed to take reasonable and
17 necessary steps in the processing of its produce to ensure
18 it was not contaminated.

19
20 VI. The Alleged "Inconsistency" Between River Ranch's
21 Contract Claim and Attached Documents Is Nonexistent.

22 Natural Selection points out that the parties named in
23 the "Master Crop Agreement" attached to River Ranch's
24 counterclaim are River Ranch and Pride of San Juan and that
25 Natural Selection's name does not appear. Natural
26 Selection apparently failed to read paragraph 55 of the
27 counterclaim wherein it is alleged:
28

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The aforesaid sales were made pursuant to the terms of a Master Crop Agreement ("Agreement") dated 14 April 2000 originally between RIVER RANCH and PRIDE OF SAN JUAN. Subsequently NATURAL SELECTION succeeded to PRIDE OF SAN JUAN's interest in the Agreement and continued to operate and provide services and product to RIVER RANCH under its terms.

It is anticipated that the details of exactly how and when Natural Selection succeeded to this agreement will be developed during discovery.

VI. Natural Selection's Motion to Strike the Affirmative Defenses Should Be Rejected Out of Hand.

Natural Selection's argument that the affirmative defenses are not proper affirmative defenses is based upon the erroneous assumption that any improper or wrongful conduct on the part of Natural Selection that might have occurred prior to the time it sold the produce for which it is suing, could never, as a matter of law, reduce or offset the amount for which Natural Selection is suing.

VII. Summary

As stated in Jones vs. Ford Motor Credit Company, 358 F.3d 205 (2nd Cir. 2004):

... [W]here at least one of the subsection 1367(c) factors is applicable, a district court should not decline to exercise supplemental jurisdiction unless it also determines that doing so would not promote the values articulated in Gibbs, 383 U.S. at

1 726: economy, convenience, fairness, and
2 comity.

3 Emphasis supplied

4 The particular facts of this case clearly establish
5 the existence of the court's supplemental jurisdiction, and
6 justify the court exercising its discretion to permit the
7 counterclaims to go forward and to deny Natural Selection's
8 request that River Ranch's affirmative defenses be
9 stricken.

10
11 Respectfully submitted,

12
13 August 21, 2007

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14
15 /s/ Joseph Choate, Jr.
16 Joseph Choate, Jr.
17 Counsel for Defendant/
18 Counter-Claimant, River Ranch
19 Fresh Foods, LLC.
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PROOF OF SERVICE

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California, the office of a member of the bar of this court at whose direction the service was made. I am over the age of 18 and not a party to the within action. My business address is 2596 Mission Street, Suite 300, San Marino, CA 91108. On the date set forth below I served the document(s) named below on the parties in this action as follows:

DOCUMENT(S) SERVED:

OPPOSITION OF RIVER RANCH FRESH FOODS TO MOTION TO DISMISS COUNTERCLAIMS AND TO STRIKE AFFIRMATIVE DEFENSES

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☐ (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at San Marino, California. I am readily familiar with the practice of Choate & Choate for collection and processing correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

☒ (FEDERAL CM/ECF) I have reviewed the latest CM/ECF Notice of Electronic Filing in this matter and determined that the court's electronic notice system will provide notice via e-mail to the above parties.

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☐ (BY PERSONAL SERVICE - COURIER) I delivered the above documents to an authorized courier or driver authorized by U. S. COURIER to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed forthwith.

☐ (BY PERSONAL SERVICE - PERSONAL DELIVERY) I personally delivered the above documents to counsel listed above on the date set forth below.

☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of Choate & Choate for collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.

☐ (BY FACSIMILE) The above-referenced document(s) were transmitted by facsimile transmission and the transmission was reported as complete and without error. The transmission verification report(s) reflecting the same are attached hereto and incorporated herein.

☐ (STATE) I declare under penalty of perjury that the foregoing is true and correct.

☒ (FEDERAL) I declare under penalty of perjury under the laws of the state of California and the United States of America that the foregoing is true and correct.

Executed August 21, 2007 at San Marino,
California.

/s/ Bradley L. Cornell
Bradley L. Cornell

Pursuant to General Order No. 45 § X(B), I attest under penalty of perjury that the concurrence of the above signatory has been obtained.

Dated: August 21, 2007

/s/Joseph Choate, Jr.
Joseph Choate, Jr.